

### **REMARKS**

Favorable reconsideration of the present application in view of the above amendments and following remarks is respectfully requested. Applicants wish to thank Examiner Russel for taking time to discuss the remaining points in the Advisory Action dated June 13, 2006. Claims 1, 5-9, 16-22 and 24-26 are pending. As set forth above, Applicants have hereby amended claims 1 and 24 to more clearly define the subject matter encompassed by the Applicants' invention. Support for the amended claims may be found in the application as originally filed, in part, at page 2, line 4; at page 5, line 16; and Examples 1-4. No new matter has been added. Therefore claims 1, 5-9, 16-22 and 24-26 remain pending.

### **STATEMENT OF COMMON OWNERSHIP**

Applicants respectfully submit that U.S. Patent No. 6,511,962 (hereinafter the "'962 patent'") was, at the time the invention of the instant application (10/810,741) was made, owned by IntraBiotics Pharmaceuticals, Inc. The assignment of U.S. Patent Application No. 09/948,374, which issued as the '962 patent, to IntraBiotics Pharmaceuticals, Inc. was recorded in the U.S. Patent and Trademark Office (USPTO) on January 12, 2001, at Reel No. 011476 and Frame No. 0937. Subsequently, the '374 application was acquired by Micrologix Biotech Inc. (now renamed Migenix Inc.). As noted above, the '374 application issued as the '962 patent and the current assignee of record is Migenix Inc. Before issuance of the '962 patent, the instant U.S. Patent Application No. 10/810,741 was filed (as a continuation of the '374 application) with the U.S. Patent Office on March 26, 2004 by Migenix Inc. The assignment of the '962 patent and the assignment of instant application 10/810,741 to Migenix Inc. was recorded on August 25, 2005 at Real No. 016662 and Frame No. 0582. Therefore, the '962 patent and invention of instant application 10/810,741 was commonly owned at the time of invention.

Thus, Applicants respectfully submit that there was common ownership of the above-identified patent and the instant patent application at the time the invention of the instant application was made.

**REJECTION UNDER 35 U.S.C. §102(e)**

In the Advisory Action mailed June 13, 2006, claims 1, 5-8, 16-22, 24 and 26 were rejected under 35 U.S.C. §102(e) as anticipated by Borders *et al.* (U.S. Patent No. 6,511,962). Applicants respectfully submit that this ground of rejection has been rendered moot and, without agreeing or acquiescing with the maintained rejection for reasons previously made of record, that the current claims do not include laspartomycin. Accordingly, Applicants respectfully submit that the instant claims are novel and, therefore, request that this rejection be withdrawn.


**REJECTION UNDER 35 U.S.C. §103(a)**

In the Advisory Action, the Examiner maintained the rejection of claim 9 under 35 U.S.C. §103(a) as obvious over the '962 patent. As set forth above, common ownership of the instant invention and the '962 patent has been established and, therefore, the '962 patent is not prior art. Thus, Applicants submit that the instant rejection has been obviated and request that it be withdrawn.

All of the claims pending in this application (1, 5-9, 16-22 and 24-26) are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is urged to contact the undersigned attorney if there are any questions prior to allowance of this matter.

Dated: June 19, 2006

Respectfully submitted,

  
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